

1 Anybody else?

2 All right. Is there any reason, other than what
3 I have already heard from you, in your mind why you cannot
4 hear and consider the evidence and render a fair and
5 impartial verdict?

6 Okay. Can you take the law as the Court
7 instructs you without any reservation whatsoever and apply
8 the facts to the Court's instruction on the law? If you
9 can't do this, please hold up your hand.

10 And what I'm saying by this is you're going to be
11 the triers of the fact. You're the judges of the fact.
12 The Court is going to give you the instructions on the law.
13 Does anybody have a problem with that, accepting what the
14 Court gives you as the instructions on the law?

15 If you're selected as a juror in this case, can
16 you extend the presumption of innocence to the defendants?
17 That is, can you presume the defendants are innocent of the
18 charges unless and until guilt is established by proof
19 which convinces you beyond a reasonable doubt? If anybody
20 can't do this, please hold up your hand.

21 Does any prospective juror feel bias or prejudice
22 because the defendants have been charged by indictment with
23 offenses against the United States?

24 Has any prospective juror formed or expressed any
25 opinion as to the guilt or the innocence of the defendants?

1 Although the defendant Walter Pugh has the
2 constitutional right to be represented by counsel, he has
3 exercised his constitutional right not to be represented by
4 counsel and to represent himself in this proceeding. Does
5 anyone have a bias for or against Defendant Walter Pugh or
6 the government in this case because Walter Pugh has chosen
7 to represent himself?

8 Does any panel member have a transportation
9 problem that you previously haven't told the jury
10 commissioner about?

11 Okay. Let me take down your numbers, and we will
12 talk with you about that in a few minutes.

13 Yes, sir, can I have your number?

14 A PROSPECTIVE JUROR: 012.

15 THE COURT: I'm sorry?

16 A PROSPECTIVE JUROR: 012.

17 THE COURT: Okay. Thanks.

18 And I saw another hand.

19 A PROSPECTIVE JUROR: 033.

20 THE COURT: 033.

21 Okay. Anybody else with transportation problem?

22 Okay. Does anybody have any medical or
23 disability problems, such as difficulty hearing, walking or
24 seeing, or do you have any kind of medical problem that
25 could affect your service on the jury?

1 A PROSPECTIVE JUROR: 012.

2 THE COURT: Okay. We will talk to you about that
3 in a minute, too. Thank you, sir.

4 Anybody else that I haven't got?

5 Yes, ma'am?

6 A PROSPECTIVE JUROR: 014.

7 THE COURT: 014. Got you. Okay. We'll talk to
8 you in just a minute. Let me get the numbers of these
9 folks.

10 A PROSPECTIVE JUROR: 002.

11 THE COURT: Did you say 002?

12 A PROSPECTIVE JUROR: 2.

13 THE COURT: Okay. Okay. And you're --

14 A PROSPECTIVE JUROR: 022.

15 THE COURT: Okay. Yes, ma'am?

16 A PROSPECTIVE JUROR: 039.

17 THE COURT: Okay. Anybody else?

18 The Court estimates that the trial will last four
19 days. Does any panel member have any immediate family or
20 personal reason or situation that persuades you that you
21 cannot serve as a juror during this period and give your
22 undivided attention to the case?

23 You're --

24 A PROSPECTIVE JUROR: 010.

25 THE COURT: Okay. Anybody else?

1 I have got you, sir. You're 001.

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay. Anyone else in the back here?

4 A PROSPECTIVE JUROR: 040.

5 THE COURT: 040. Okay.

6 Yes, ma'am?

7 A PROSPECTIVE JUROR: 015.

8 THE COURT: And --

9 A PROSPECTIVE JUROR: 051.

10 THE COURT: What row are you in?

11 A PROSPECTIVE JUROR: Third.

12 THE COURT: Oh, there you are. Yes, ma'am?

13 A PROSPECTIVE JUROR: 006.

14 THE COURT: 006. Anybody else?

15 All right. I'm almost done.

16 Finally, this is the last question. Can any of
17 you think of any matter that you should call to the Court's
18 attention that may have some bearing on your qualifications
19 as a juror or that, even to the slightest degree, may
20 prevent your rendering a fair and impartial verdict based
21 solely upon the evidence and my instructions as to the law?
22 Anything I have failed to ask that you think may be of some
23 import?

24 All right. At this point, I think we will take a
25 recess except for -- actually, the recess will be for

1 everybody to go up to the jury room, Steve, except for
2 numbers -- if I miss somebody, tell me -- number 014, 010,
3 040, 012, 002, 022, 033, 015, 051, 006, and 009.

4 Did I miss anybody? And 001. I'm sorry. Wait.
5 And 039. Everybody hear that?

6 Yes, sir?

7 MR. ANDREWS: And 040.

8 THE COURT: Just wanted to mark it off. Do you
9 want me to go through it one more time just in case? I'll
10 do it once more just in case you didn't hear it.

11 14, and these are the -- I'm leaving the 0 off
12 the front. 14, 10, 40, 12, 2, 22, 39, 33, 15, 51, 6 and 9,
13 and 001. Number one, I'm sorry. I keep forgetting one.
14 Okay. All right.

15 The rest of you I'll ask to please go up to room
16 917, and you will probably be there for about 45 minutes,
17 for about 45 minutes. And then we will be able to tell you
18 who we have selected.

19 (Members of the jury panel leave the courtroom.)

20 THE COURTROOM DEPUTY: Anyone who is asked to
21 stay, if you will please step back in this room back here,
22 please.

23 For the record, one of the marshals has advised
24 us that the juror in the 9th seat --

25 DEPUTY MARSHAL NIEMER: Juror 057.

1 THE COURT: -- teaches his daughter.

2 DEPUTY MARSHAL NIEMER: Ballet.

3 THE COURT: I don't know if you want me to
4 inquire at all about that. Nobody has a feeling?

5 Okay. All right. And Mr. Snyder informed me
6 that juror number 03, the who was down there in the second
7 row, is a diabetic, and she had to take her blood at 10 of,
8 and she has got to eat -- I just inquired -- she has got to
9 eat by 12:30.

10 I think we will talk to her first, because she
11 apparently is happy to serve, but I want to find out what
12 kind of difficulties we will have with her being a
13 diabetic, because it sounds like she's a pretty severe
14 diabetic, and, if it requires us taking a whole lot of
15 breaks and everything, I'm concerned about that. So why
16 don't we talk to her first, and then we can let her go get
17 something to eat.

18 (Juror 039 present.)

19 Good morning again.

20 A PROSPECTIVE JUROR: 039.

21 THE COURT: Mr. Snyder informed me that you're a
22 diabetic and that you have to take your blood and eat
23 within a certain amount of time. And we appreciate very
24 much your wanting to serve.

25 I guess the question I have for you is I have

1 told you what the schedule is. We start about nine. We
2 take a 15-minute break mid-morning. We take an
3 hour-and-a-half break for lunch and another mid-afternoon
4 break, recess between 4:30 and five. Can you tell me how
5 you think that might affect your schedule with your
6 medication?

7 A PROSPECTIVE JUROR: I would like to say it
8 would be no problem. I don't even have in my wallet that
9 I'm diabetic because I try not to even think about it, but
10 the past -- I'm pretty diabetic. So last week several days
11 my blood went to 35, and I had to go to bed, drink orange
12 juice, and then it would go up to like 400. And I have
13 always wanted to serve on a jury, and I just don't know how
14 anybody would react if I had to stop and drink orange juice
15 and go to bed, because I become so -- I'm very regimented,
16 and insulin doesn't always help, and that's just --

17 THE COURT: I appreciate that. Let me ask you
18 this. It's not drinking the orange juice, but it's going
19 to bed.

20 A PROSPECTIVE JUROR: Because it leaves you kind
21 of -- I don't know if anybody is familiar with it, but,
22 when your blood goes down that low, you're not in full
23 control of what's going on.

24 THE COURT: Okay.

25 A PROSPECTIVE JUROR: And it might not. It might

1 be just perfect. I have no control over that.

2 THE COURT: Anything counsel wishes to ask in
3 this regard?

4 MR. FELSON: When is the last time it happened?

5 A PROSPECTIVE JUROR: I have got my machine here.
6 Last week, from 35 to 450.

7 THE COURT: Okay. Thank you. I think you can go
8 ahead and eat. I know --

9 A PROSPECTIVE JUROR: I'll take my shot, and then
10 I'll eat.

11 THE COURT: Are you going to eat here? Did you
12 bring something with you?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: I tell you what. We're going to be
15 probably 45 minutes. You know what? I have a better idea.
16 Let me talk to counsel about you, and then we may even have
17 a decision.

18 (Prospective juror 039 leaves.)

19 THE COURT: Counsel, my inclination is to excuse
20 her for cause. As much as she wants to be a juror and it
21 looks like she would certainly be a good one, I am
22 concerned about a juror who as recently as last week had to
23 go to bed, because, if that happens, we have got to stop
24 the trial.

25 MR. FELSON: Actually, we will have an alternate.

1 THE COURT: But I don't want to start a trial
2 knowing that we could lose one of our alternates right
3 away.

4 MR. FELSON: I understand. My only concern is
5 she's a diabetic, yes, but she wants to serve. And that is
6 a disability of some sort, but certainly she wants to
7 serve, and I hate being sort of, I guess, the one that says
8 diabetics shouldn't serve.

9 THE COURT: I'm not saying a diabetic shouldn't
10 serve. I'm saying, because her diabetes flared up within
11 the last week and she had to go to bed, that we will have
12 to stop the trial if that occurs.

13 MR. FELSON: I wouldn't have any problem if you
14 want to get her off for cause.

15 THE COURT: From the government, any objection
16 for excusing her for cause?

17 MS. CROSS: No objection.

18 THE COURT: The Court is going to excuse juror
19 number 39 for cause.

20 Steve, you want to tell her she can leave?

21 THE COURTROOM DEPUTY: She's taking her shot now.
22 I'll call the next one.

23 THE COURT: Tell her the Court appreciates very
24 much her willingness to serve.

25 Actually, number one -- let me go over with

1 you -- let me go over with you who I intend to excuse for
2 cause, because a couple of those folks are back in the room
3 there, and there really wouldn't be any need to question
4 them.

5 Actually, I was going to excuse number one for
6 cause. He was the one that started giving us the speech
7 about the thousands dollar loss and was angry about being
8 here, and I just don't think nobody with that attitude is
9 going to be able to be fair and impartial and have an open
10 mind. Anyone disagree with that?

11 All right. Number one is excused for cause. And
12 we can -- you can have him leave the room as well, Steve.

13 Number 060 is the fellow who's wife was a teller,
14 a bank teller, and he said, again, he said that it would be
15 difficult for him to hear evidence in a bank robbery case,
16 that he didn't feel he could be fair and impartial about
17 it. I'm going to excuse him for cause. Any objection to
18 that?

19 All right. Number 037, which is on your list
20 number 17, he's the prospective juror whose father and
21 brother-in-law were members of the Hamilton Police
22 Department and also felt that he couldn't be fair. The
23 Court is going to excuse him for cause. That was 037,
24 which is number 17 on everybody's list.

25 And number 23 on your list, which is actually

1 022, that is the gentleman -- he was in the first row here
2 in the back. He's the fellow who says that he's got the
3 brother in federal prison and he's got the anxiety when he
4 sees a gun, says he would have an anxiety attack. I'm
5 going to excuse him for cause. I don't want to cause
6 anyone to have an anxiety attack in the courtroom.

7 We have already talked about number 25, which is
8 039. That's our juror just now who's the diabetic. She's
9 excused for cause.

10 Those are all the ones I have for cause at this
11 time.

12 So, Steve, I think you can have 001 leave, and
13 you can have 022 leave now, and we can go ahead and excuse
14 039. And you can bring out 14, which is number two on your
15 list. We'll bring out 14.

16 Do you want to borrow one of those books?

17 MR. ANDREWS: No. I was passing some time
18 reading the Batson challenge area.

19 (Prospective juror 014 is present.)

20 THE COURT: Hi. You are number 014, which is
21 number two. And I apologize. All I marked down is that
22 you responded positively to one of the questions. Can you
23 tell me what it was?

24 A PROSPECTIVE JUROR: About medical reasons.

25 THE COURT: Can you tell me?

1 A PROSPECTIVE JUROR: I have a test on Friday for
2 a potentially life threatening disease.

3 THE COURT: Okay. All right. It appears to me
4 that your mind, it's going to be difficult for you to
5 concentrate on what's going on here in the courtroom.

6 I propose to excuse this juror for cause.

7 MR. FELSON: No objection.

8 MS. CROSS: No objection.

9 DEFENDANT WALTER PUGH: No objection.

10 THE COURT: We appreciate your willingness to
11 serve, and good luck on Friday.

12 A PROSPECTIVE JUROR: Thank you.

13 (Prospective juror 014 leaves the courtroom.)

14 (Prospective juror 010 is present.)

15 THE COURT: This is number 8, which is 010, ten.

16 Yes, ma'am?

17 A PROSPECTIVE JUROR: I have a major issue with
18 child care is my reason.

19 THE COURT: Okay. And what is that? What is the
20 child care problem?

21 A PROSPECTIVE JUROR: I have no one to watch my
22 two year old. That's why he's with me here today.

23 THE COURT: Did you get the letter from the jury
24 commissioner? When you got the packet to fill out and it
25 said that if you -- if there is any reason why you can't

1 serve --

2 A PROSPECTIVE JUROR: I had an issue back on May
3 30. My children, I was called before, and, when I called
4 in, she said the only thing I could do was request for a
5 postponement. My children were just out of school. I have
6 two older ones, but they can get on the bus themselves. So
7 the postponement was until now. But I have no one to watch
8 the baby unless I enroll him in daycare and pay a
9 substantial amount of money. That's just our issue, my
10 issue.

11 THE COURT: And what she told you was that you
12 could only get a postponement?

13 A PROSPECTIVE JUROR: Yes. Yes, that was it.

14 THE COURT: The Court is going to excuse you for
15 cause.

16 A PROSPECTIVE JUROR: I appreciate it.

17 THE COURT: Your child is upstairs?

18 Where is her child?

19 A PROSPECTIVE JUROR: With a stranger.

20 THE COURTROOM DEPUTY: Her husband is supposed to
21 be on his way.

22 A PROSPECTIVE JUROR: My husband is now on his
23 way after all that. Where is that deputy? Up at 917 where
24 she was?

25 THE COURT: You can go and collect your child.

1 I'm going to excuse you.

2 How old are your kids?

3 A PROSPECTIVE JUROR: 13, nine, and he is two.

4 THE COURT: So you have nobody to take care of
5 your two year old? You're permanently excused. I'm
6 permanently excusing you from the panel.

7 (Prospective juror 010 leaves.)

8 Next one would be 040, which is number 14 on your
9 list.

10 (Prospective juror 040 present.)

11 THE COURT: Hi, sir. All I put down was that you
12 had something you responded positively to one of the
13 questions, but I don't know which one.

14 A PROSPECTIVE JUROR: Okay. Basically, you asked
15 if we had any problem. I own a small business, and I work
16 about 15 hours a day, and I have no problem being on the
17 jury, but I have to work every night to be able to do it,
18 and I just don't know getting back and forth, being awake
19 is going to be real tough.

20 THE COURT: Did you get the packet from the jury
21 commissioner that came out where you filled out the
22 questionnaire and everything?

23 A PROSPECTIVE JUROR: My wife probably filled it
24 out. I work so much, I think I didn't. I signed it, but
25 that's about it.

1 THE COURT: Included in this packet is, if there
2 is a reason why you can't serve, all you needed to do was
3 send a letter in asking that you be excused. The problem
4 is when you don't do this, because I excused a number of
5 people. If I had got a letter telling me what you just
6 said, I would have excused you. But the problem is now
7 that we only called in a certain number of jurors. We try
8 not to inconvenience a lot people. But we depend on those
9 folks who get called in that haven't asked previously to be
10 excused in the count of people.

11 And I have a problem excusing you at this point,
12 because, you know, we're -- our numbers are such that, you
13 know, you may have to serve. I advise you next time, if
14 you ever get a questionnaire again, please take a look at
15 it, you know, and send a letter in, and you will get
16 excused.

17 A PROSPECTIVE JUROR: I didn't know on federal
18 you could.

19 THE COURT: I appreciate you telling us about it.
20 Thank you.

21 (Prospective juror 040 leaves.)

22 THE COURT: Any comments on that juror? Anyone
23 want him excused for cause, or you want to leave him on?

24 MR. FELSON: It's a hardship for everybody,
25 Judge. And I agree with you. I might kick him off for

1 peremptory, but, as far as that being the reason for
2 cause --

3 THE COURT: Ms. Cross?

4 MS. CROSS: We don't have any objection, Your
5 Honor. We defer to the Court. We were not going to strike
6 him, so we would just defer to the Court.

7 THE COURT: Let's see. I'll tell you, let's see
8 how many more we have for cause. If we have got enough
9 left for peremptories, then I think I'll probably excuse
10 him only because -- the reason I give them that speech is
11 he should have sent in a letter. On the other hand, if
12 somebody is not happy being a juror and they're distracted,
13 I don't think they're going to be the best juror in the
14 world. You know, if they're sitting here not wanting to be
15 here, they may not be paying attention to the evidence like
16 they should. So, if we have got enough people left after
17 we finish these folks, I will excuse him for cause. If we
18 don't, we'll keep him on.

19 Okay. Let's see number 012, which would be
20 number 15 on our list.

21 (Prospective juror 012 present.)

22 THE COURT: Hi, sir. Okay. You responded
23 positively to the question on transportation. What kind of
24 transportation problem do you have?

25 A PROSPECTIVE JUROR: My car is not too good.

1 THE COURT: Your what?

2 A PROSPECTIVE JUROR: My car is not too good, oil
3 plugs up and motor.

4 THE COURT: You're coming from Manchester?

5 A PROSPECTIVE JUROR: Ma'am?

6 THE COURT: Do you have difficulty hearing?

7 A PROSPECTIVE JUROR: Just, you know, a big room
8 like that awhile ago, but I can do pretty good if I'm near
9 someone, you know.

10 THE COURT: Can you sit down again? Would you
11 sit there in the jury box?

12 Mr. Pugh, Walter, will you ask Steve-- have a
13 seat. You want to ask Steve what his name is?

14 DEFENDANT W. PUGH: Sir, what is your name and
15 juror number, sir?

16 THE COURT: Could you hear that?

17 DEFENDANT W. PUGH: Sir, what is your juror
18 number and name?

19 A PROSPECTIVE JUROR: 012.

20 DEFENDANT WALTER PUGH: Excuse me?

21 A PROSPECTIVE JUROR: 012.

22 THE COURT: What kind of -- how far is it from
23 Manchester?

24 A PROSPECTIVE JUROR: I couldn't hear. Repeat
25 that again.

1 THE COURT: Are you having trouble hearing me?

2 A PROSPECTIVE JUROR: A little bit.

3 THE COURT: How far a drive is it from

4 Manchester, from where you live, to the courthouse?

5 A PROSPECTIVE JUROR: Oh, you mean down here?

6 THE COURT: Yes.

7 A PROSPECTIVE JUROR: About 80 miles.

8 THE COURT: Eighty miles, and you have difficulty
9 with your car?

10 A PROSPECTIVE JUROR: Yes. I don't go on very
11 many long trips. I drove down here today with the guy I
12 work for, the foreman. I told him I didn't want to trust
13 that car and told him I'd hate to burn it out. He's
14 waiting on me now down below.

15 THE COURT: He's waiting on you. Thank you, sir,
16 I appreciate it.

17 A PROSPECTIVE JUROR: Where do I go?

18 THE COURT: We appreciate your coming. What I'm
19 going to do, I think, because you've got a little bit of a
20 hearing problem and your problem with transportation, I'm
21 going to excuse you from the jury.

22 A PROSPECTIVE JUROR: All right. I'm sorry I got
23 that, but, you know, I just, you know --

24 THE COURT: I understand, and we appreciate your
25 coming today. Thank you very much.

1 (Prospective juror 012 leaves.)

2 THE COURT: That was 12. I have excused 12 for
3 cause. I think he was willing to serve, but I think he did
4 have a hearing problem if he couldn't hear me from here to
5 the jury box. I don't think he would have been a real good
6 juror if he couldn't hear the evidence.

7 Okay. Next would be number 21 on the list, which
8 would be 002.

9 (Prospective juror 002 present.)

10 THE COURT: Good morning again.

11 A PROSPECTIVE JUROR: Good morning.

12 THE COURT: Speak up, please. Okay. I know you
13 responded positively to one of my questions, but I'm not
14 sure which one. What kind of problem do you have?

15 A PROSPECTIVE JUROR: Okay. I'm hard of hearing,
16 and I need -- I wear a hearing aid, but I need to be able
17 to see the person in order to completely hear, I mean see
18 as well as hear. Anybody speaking -- I can't hear
19 whispers. If there is a lot of noise, I can't hear what's
20 going on.

21 THE COURT: Okay.

22 A PROSPECTIVE JUROR: Also, I have lymphedema
23 which is a result of cancer, and I have bladder problems.

24 THE COURT: We appreciate very much your
25 willingness to serving and your showing up. Can you hear

1 me?

2 A PROSPECTIVE JUROR: Yes. Sort of.

3 THE COURT: But, as you know, it's really
4 important that jurors hear all of the evidence, and I
5 appreciate your telling me about the problems, and, as much
6 as I would like to have you as juror, I feel it may not be
7 fair to the parties, because you may not be able to hear
8 everything. So I'm going to excuse you, and I'm going to
9 excuse you personally from the jury panel.

10 A PROSPECTIVE JUROR: So I don't have to call in
11 again?

12 THE COURT: Right. You don't have to call in
13 anymore. And we appreciate your coming here today. You're
14 all done.

15 A PROSPECTIVE JUROR: Thank you.

16 (Prospective juror 002 leaves.)

17 THE COURT: Next one I have got is 033. Next one
18 is number 28, which is 033 on the list.

19 (Prospective juror 033 present.)

20 THE COURT: Good morning, sir, again.

21 A PROSPECTIVE JUROR: Good morning.

22 THE COURT: You responded positively to one of
23 the questions I asked, and you said you wanted to give your
24 answer in private.

25 A PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: Can you tell us, I'm not sure which
2 question you responded to or what you want.

3 A PROSPECTIVE JUROR: Prejudice.

4 THE COURT: About what?

5 A PROSPECTIVE JUROR: Prejudice. I'm prejudiced.

6 THE COURT: Prejudice. Oh, okay.

7 A PROSPECTIVE JUROR: My youngest daughter --

8 THE COURT: Let me ask you this. Are you
9 prejudiced against people of color?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. As a result of that prejudice,
12 do you feel that you could not be a fair and impartial
13 juror in this case?

14 A PROSPECTIVE JUROR: No, I could not be.

15 THE COURT: You could not be. All right. You're
16 excused. Thank you.

17 (Prospective Juror 033 leaves.)

18 THE COURT: I assume that you would have objected
19 to him. Would that be a fair assumption?

20 MR. ANDREWS: Actually, our observation would be
21 maybe it would be even. We have two white people on our
22 side, and they only have one white person. So maybe it
23 would work out to our benefit.

24 THE COURT: Next is 15, who is 29 on your list.

25 (Prospective juror 015 present.)

1 THE COURT: Good morning again.

2 A PROSPECTIVE JUROR: Hi.

3 THE COURT: Hi. You responded to us you had some
4 kind of problem, but I can't remember what.

5 A PROSPECTIVE JUROR: My husband has to have a
6 biopsy done this Friday. So I have to be there to take him
7 and pick him up, but that's this Friday. I wasn't sure
8 when everything would start.

9 THE COURT: I don't think we're going to be done
10 by then. I'll tell you what. I need to see how many
11 jurors I have got left, so I'm going to ask you to remain
12 for the time being. If you do end up on the panel and
13 aren't able to make any other arrangements, then we just
14 may have to recess for that day.

15 A PROSPECTIVE JUROR: I feel bad.

16 MR. FELSON: Just to remind you, Dr. Fularo is
17 coming in and intending to testify on Friday.

18 THE COURT: All right. Let's see. All right.
19 Let me see how many jurors I have got. Okay?

20 A PROSPECTIVE JUROR: Okay.

21 MR. FELSON: I didn't check him for the following
22 week, so maybe I will do that when we get to the break.

23 THE COURT: All right. We will see how it goes.
24 Thank you.

25 (Prospective juror 015 leaves.)

1 THE COURT: Next will be on your list 23, number
2 051.

3 (Prospective juror 051 present.)

4 THE COURT: Hi.

5 A PROSPECTIVE JUROR: Hi.

6 THE COURT: I know you responded positively to
7 one of the questions, but I'm not sure what the question
8 was.

9 A PROSPECTIVE JUROR: It was that the case, you
10 were predicting about four days for it, and so I figured --
11 I didn't know if that would carry over into Monday of next
12 week.

13 THE COURT: It's possible. We can never predict
14 exactly, when we start these cases, exactly how long
15 they're going to take and when it will go to the jury or
16 how long the jury will deliberate. So it can run into
17 early next week, into Monday.

18 A PROSPECTIVE JUROR: I have two appointments
19 back to back on Monday. I had surgery six months ago.
20 It's follow-up with two doctors. So it's just I waited to
21 where I could get a day where they both coincide back to
22 back, you know. So I just didn't know if that would be a
23 problem if it carried over into Monday. Other than that,
24 it's not a problem. It's Monday morning at 9:30 up at the
25 hospital.

1 THE COURT: How long do you think they would
2 take?

3 A PROSPECTIVE JUROR: The one appointment, I know
4 the first one does not take long, probably about 20 minutes
5 or something. But again it's up at the hospital. And
6 then, when I'm done there, I go to the surgeon that, you
7 know, the one who performed the surgery.

8 THE COURT: Are they all located in the same
9 place?

10 A PROSPECTIVE JUROR: They're at Good Samaritan
11 Hospital starting at 9:30.

12 THE COURT: What time is your second appointment?

13 A PROSPECTIVE JUROR: I go immediately following.
14 So I would say by ten o'clock I would probably be seeing
15 him.

16 THE COURT: Thanks for letting this be known.

17 (Prospective juror 051 leaves.)

18 THE COURT: Number 006, which is number 35 on
19 your list.

20 (Prospective juror 006 present.)

21 THE COURT: Hi.

22 A PROSPECTIVE JUROR: Hi.

23 THE COURT: You responded to there was some
24 problem.

25 A PROSPECTIVE JUROR: Yes. My grandmother who

1 raised me, she's in a nursing home. She has cancer. And
2 it's like every week they call the family in and say it's
3 time, and she gets better. But it really is almost time
4 for her to pass away. So they called us in Saturday and
5 the week before.

6 THE COURT: Okay.

7 A PROSPECTIVE JUROR: It's been going on for like
8 a month and a half.

9 THE COURT: Where is your grandma?

10 A PROSPECTIVE JUROR: She's at Heartland Nursing
11 Home in Hillsboro.

12 THE COURT: That's in Hillsboro?

13 A PROSPECTIVE JUROR: Um-hum.

14 THE COURT: Okay. Thank you.

15 (Prospective juror 006 leaves.)

16 THE COURT: We have one more to go, 009, which is
17 number 39 on your list.

18 (Prospective juror 009 present.)

19 THE COURT: Hi. You responded that there was
20 some problem, but I didn't write it down.

21 A PROSPECTIVE JUROR: Yes. Actually, that's what
22 I've been saying all along. I didn't say anything.

23 THE COURT: For some reason I had that marked
24 down. I apologize. Thanks for waiting for us like that.
25 Sorry I kept you in the room.

1 (Prospective juror 009 leaves.)

2 Do you all want to take -- how much time would
3 you like to go over your preemptories among yourselves
4 before we do it -- the Court does it? I have got -- we
5 have got four folks that I haven't excused for cause that
6 each had some legitimate problems. Let me see if I can
7 count up how many people we haven't excused yet and see if
8 we have enough preemptories left. I think we have 26
9 according to my count. I could be off. I count 26 left if
10 we excuse the four that -- am I off?

11 Let me go over the ones that are on the bubble
12 here with you and see what we have in addition to that.
13 The ones I have question marks about are juror 14, which is
14 040. He's the fellow that worked 15 hours a day and said
15 it was going to be a problem being here. Juror number 29
16 is the one whose husband is having the biopsy on Friday.
17 Juror number 32, who's number 051, she's got the doctors'
18 follow-up appointments on Monday morning, and, if possible,
19 she's the one that I would probably leave on, because we
20 could always start a little later on Monday morning. And
21 juror number 25, who is 006, and she's the one who has got
22 the grandmother dying in the nursing home. Again, you
23 know, if we had to, we could recess, but I'm not sure how
24 much time she would want off. That one is a little more
25 problematic.

1 Can you count how many are left? If we excused
2 all those, how many do you count are left?

3 MR. RICH: Twenty-seven. We have 56. You didn't
4 add back in 56 which is additional here.

5 THE COURT: You're right. I didn't count 56
6 either. Then does anyone have any objection to -- we need
7 alternates. All right. Let's wait. Let's wait, because
8 Steve shows me my math is not quite what it should be.
9 Let's wait.

10 Why don't you figure out your peremptories and
11 see where it goes? Right now, I'm not going to excuse
12 those four people for cause.

13 How long does everybody want to go over your
14 challenges before we do them?

15 MS. CROSS: Fifteen minutes.

16 THE COURT: Court will start up at quarter of.

17 (Recess at 12:45 p.m.)

18 AFTER RECESS

19 THE COURT: All right. I have provided counsel
20 with my handy dandy little chart here and peremptory
21 challenges guide which helps me keep track of who's getting
22 excused. As you can see, the government goes first, and
23 then the defendant gets two challenges after that and so
24 forth.

25 As you may recall from the final pretrial, you

1 can exercise your preemptories in any numerical order you
2 want. In other words, you don't have to exercise them on
3 the people that are in the box first. You can exercise
4 them to anyone in the prospective panel. You can go back
5 and forth numerically. If you pass for a challenge, you
6 only pass for that one challenge. You don't pass for the
7 remainder of your challenges. So, if you decide to
8 exercise one, you have the rest of your challenges left.

9 All right. Government's first challenge.

10 MS. CROSS: Number 023.

11 THE COURT: And is that -- what number is it on
12 the first set of numbers?

13 MS. CROSS: Number three, Your Honor.

14 THE COURT: Okay. Number three, which is 023.

15 All right. Defendants' first and second
16 challenges.

17 MR. FELSON: 032 and --

18 THE COURT: And that's number four?

19 MR. FELSON: Yes.

20 THE COURT: Four, 032.

21 MR. FELSON: And --

22 THE COURT: Mr. Felson, are you doing the
23 challenges for both defendants?

24 MR. FELSON: Yes, ma'am.

25 THE COURT: Okay.

1 MR. FELSON: And 044, noting that 040 might be
2 challenged for cause, so I'm skipping that. I was thinking
3 about this, but I realized he was on the bubble because --

4 THE COURT: But the one that you're excusing
5 right now is 044. What's the number in front of that?

6 MR. FELSON: Number in front is 16. When do I
7 make a Batson challenge objection?

8 THE COURT: When the peremptory challenge is
9 exercised.

10 MR. FELSON: Then, at this point, I would need to
11 make the objection for juror number three. Three, the one
12 sitting here in the third seat, is number 023. I would --
13 we have 41 jurors and three jurors of color, and that's one
14 of them. So that knocks us down to less than 7-and-a-half
15 percent or less.

16 THE COURT: Let me ask the government for its
17 justification for exercising a peremptory challenge for
18 juror number 023, which is also number three on the list.

19 MS. CROSS: Yes. Your Honor, 023 has two
20 brothers that are in jail, and also, when the Court asked
21 the question as to whether or not law enforcement always
22 tells the truth or could they be believed, she -- we
23 watched her, and she physically made a gesture like, oh,
24 she does not believe law enforcement.

25 THE COURT: Okay. Anything?

1 MR. FELSON: I certainly didn't get that from
2 her, and I guess there are a lot of jurors that had some
3 relatives in jail or some relatives that had been accused
4 of a crime, and some of them we didn't even get into the
5 victims of the crime, et cetera. But the point is, when we
6 have got a room full of 41 people and only three of them
7 are of color, I particularly ought to make an objection to
8 the whole scenario of the fact that there weren't more
9 blacks to choose from and only three in here. So that mix
10 is -- I guess it's not too hard to pick on somebody and
11 say, well, they looked this way or they gave a dirty look.
12 It's so easy to knock them off that way, and, when we have
13 nobody to choose from, it puts us in a bind, because these
14 gentlemen are entitled to a jury of their peers. And while
15 I realize life isn't perfect, certainly we can get it a
16 little more perfect than that. But I made my objection.

17 THE COURT: The Court notes your objection. The
18 Court also realizes, not only were her two brothers in
19 jail, but they were in jail for robbery, which is what the
20 defendants here are charged with. I think she was the only
21 prospective juror who had two family members in jail.
22 There are some others that had one. The Court's going to
23 deny the motion, but your objection is preserved for the
24 record.

25 Government's second challenge?

1 MR. FELSON: Number 025.

2 THE COURT: Can you give me the number in front
3 of that?

4 MS. CROSS: I'm sorry, Your Honor.

5 THE COURTROOM DEPUTY: 12, Judge.

6 THE COURT: Okay. Number 12. All right.

7 Next will be Defendants' third and fourth
8 challenges.

9 MR. FELSON: 047 was number 22, and 043 who is
10 number 26 on the list.

11 THE COURT: Let me give you some idea of what
12 we're down to now.

13 THE COURTROOM DEPUTY: The 12th one runs through
14 juror 046, which is number 27.

15 THE COURT: All right. Now we're down to number
16 27, which is 046. That would be the first 12 would be down
17 to that person at this point. We're ready for the
18 government's third challenge.

19 MS. CROSS: Number 034 which would be number 34.

20 THE COURT: Defendants' fifth and sixth
21 challenges.

22 MR. FELSON: 056, which is -- it's either -- it's
23 somewhere between --

24 THE COURT: I see. It doesn't have a number.

25 MR. FELSON: It was fit in there, and I think

1 they moved the gentleman.

2 THE COURT: Okay. I'm with you.

3 MR. FELSON: And just for the record, I thought I
4 saw him reading a book, and I'm not sure if we were ever
5 looking for that, but I certainly saw him continually
6 looking down, for whatever that means.

7 THE COURT: You don't have to give a reason for
8 your preemptories.

9 MR. FELSON: I understand. He's 56, and he's
10 somewhere between 25 and 27.

11 THE COURT: Right.

12 MR. FELSON: How about number 24 as well?

13 THE COURT: 24 are you saying --

14 MR. FELSON: 016 is sitting in seat number 24.

15 THE COURT: Okay. All right. We're ready for
16 the government's fourth challenge.

17 MS. CROSS: Our fourth challenge is number 040,
18 which I believe is sitting in seat 14.

19 THE COURT: All right. We are ready for the
20 defendants' seventh and eighth challenges.

21 What are we down to, Steve?

22 THE COURTROOM DEPUTY: Through 038, number 31.

23 THE COURT: We're down to number 31, which is 038
24 for the 12, for the panel at this point.

25 MR. FELSON: One second. Papers are starting to

1 take over my life here. One second, Your Honor.

2 THE COURT: Don't worry, Mr. Felson. That's
3 fine.

4 MR. FELSON: I just want to double check one
5 thing. 004, which is number 19.

6 THE COURT: 004.

7 MR. FELSON: And the one right before that, 055,
8 which is 18 and 19.

9 THE COURT: Okay. I believe we should now be up
10 to what, Steve, 33? We're now down to 33, would be the
11 first 12 would end at 33. And we're ready for the
12 government's fifth challenge.

13 MS. CROSS: The government strikes 049.

14 THE COURT: And what number is that?

15 MS. CROSS: And that is number ten seated in seat
16 ten, 049.

17 MR. FELSON: We will make the objection again of
18 that's the black male, the only black male except for the
19 defendants.

20 THE COURT: All right. Ms. Cross, you want to
21 respond?

22 MS. CROSS: Your Honor, the government wishes to
23 exercise peremptory challenges against all high school
24 dropouts, and this person is a high school dropout. We
25 have exercised a challenge against 025 for that reason,

1 which was our second challenge, and then also 040 is a high
2 school dropout, which was our fourth challenge, and then
3 this one 049, which is the black male, is being exercised
4 because of the high school dropout.

5 THE COURT: Okay. Anything you wish to say for
6 the record?

7 MR. FELSON: First of all, there is no evidence
8 that a high school dropout whether --

9 THE COURT: You have to keep your voice up,
10 Mr. Felson.

11 MR. FELSON: I'm sorry. There is no -- the
12 concept is that a high school dropout will be somehow
13 unfair when you weigh against, without any questions being
14 directed or any wrong answers or not wrong answers, but you
15 understand, answers that would indicate some sort of
16 prejudice or some sort of inability to sit fairly when it's
17 the only black male in the whole room, when you weigh those
18 two factors, it seems obvious the reason why that person
19 has been kicked out.

20 THE COURT: Anything further, Ms. Cross, on that?

21 MS. CROSS: Your Honor, high school dropouts,
22 that's not a protected class, so the government can
23 exercise its challenges against high school dropouts.

24 MR. ANDREWS: However, it is, while racially
25 neutral, it has a disparate impact. If you look at AMSAF

1 Cincinnati, Ohio, you find that African-Americans have an
2 extremely much higher or extremely high dropout rate. So,
3 while it may be neutral on its face, it will have a
4 disparate impact.

5 THE COURT: I'm sorry to interrupt you,
6 Mr. Andrews, but our pool is not just Cincinnati, Ohio.
7 It's eight counties.

8 MR. ANDREWS: In southwestern Ohio, I think you
9 would still find that, and I don't think it's racially
10 neutral on its face. It becomes, you know, has an adverse
11 impact upon a recognizable group. And I think that's
12 clearly here. And when taken in conjunction with already
13 removing one prior African-American juror and removing now
14 both who were, quote-unquote, in the box, leaving but one,
15 I think you take that in conjunction with each other, I
16 think, quite candidly, that's an empris (phonetic)
17 situation.

18 THE COURT: Who, do you recall who was what?

19 MS. CROSS: 038 who was a college graduate.

20 THE COURT: So there is someone in the first 12
21 who is African-American?

22 MR. FELSON: Yes, there is.

23 MS. CROSS: Yes, there is, Your Honor.

24 THE COURT: All right. The Court's going to deny
25 the Batson challenge. Are we ready for the defendants'

1 ninth challenge?

2 MR. FELSON: I think we can accept everyone else.

3 THE COURT: Okay. You're passing?

4 MR. FELSON: Passing. With the exception, Judge,
5 that I think there are still some jurors on there that you
6 were going to excuse. I guess I'm waiting to hear your
7 final decision on that.

8 THE COURT: I'm not excusing them for cause.

9 MR. FELSON: All right. Then I would, yes,
10 number 29's husband has a biopsy on Friday, and that's the
11 day Dr. Fulero is going to testify.

12 THE COURT: All right. 29, which is 015, will be
13 excused.

14 We're now ready for the government's sixth and
15 last challenge.

16 MS. CROSS: 053, which is seated in seat 37.

17 THE COURT: Steve informs me we're through number
18 36 right now, and we're ready for the defendants' tenth and
19 last challenge to the first 12.

20 MR. FELSON: That's not including the alternates?

21 THE COURT: No. We're not talking about
22 alternates yet. This is just the first 12.

23 MR. FELSON: I'm satisfied.

24 THE COURT: All right. Tenth challenge for the
25 defendant is a pass. All right.

1 MR. FELSON: Of course, with the exception of the
2 objections I made.

3 THE COURT: No. The objections are preserved.
4 No problem.

5 We're now going to the alternates. You have two
6 alternates, and you each get a challenge for the
7 alternates. Does the government have a challenge for the
8 alternates?

9 MS. CROSS: 006, Your Honor, which is in seat
10 number 35, that's the lady whose grandmother is dying.

11 THE COURT: Okay. You can't use that as a
12 challenge because she's the first 12.

13 MS. CROSS: Okay. By agreement, if you all want
14 to agree to that, we could do that.

15 MR. FELSON: I have no problem with her going.
16 She could be called out at any time. That's the woman her
17 grandmother --

18 THE COURT: Right.

19 MR. FELSON: If we want to exercise a peremptory
20 for that, I wouldn't have any objection. Now I see we have
21 a few left so --

22 THE COURT: Yes, we have got -- all right. We're
23 down to -- I'm going to permit, because there is no
24 objection, I'm going to permit the government to exercise a
25 challenge on number 35, which we're now, the panel itself,

1 the first 12 is down to 38. So the pool of alternates
2 right now are 39, 40 and 41, of which they would be 39 and
3 40. And we still have -- we have still got the woman on
4 who has the doctor's appointments on Monday morning. I
5 guess that's the only one we have got that had a problem.

6 If 40 and 41 are agreeable to everybody as the
7 alternates, we could go ahead and excuse number 32, which
8 is 051. If not, we can leave her on and I'll permit the
9 defendant to exercise a challenge for one of the
10 alternates.

11 MR. FELSON: The alternates are currently 39 and
12 40?

13 THE COURT: Yes. The alternates would be 39 and
14 40.

15 MR. FELSON: So, if you give me one second while
16 I take a look at 39, 40 and 41.

17 Okay. I would like to excuse 39, which is number
18 9 sitting in seat 39.

19 THE COURT: All right. So our alternates are 40
20 and 41.

21 Let's go over the numbers with you to make sure
22 we have got everybody here. I think our first juror would
23 be number 7 who is 017. Second juror is number 9, who was
24 previously 057. Third juror is number 11, who was 007.
25 Fourth juror is 13, who was 027. The fifth juror is number

1 20, who was previously 020. The sixth juror is 27, who was
2 previously 046. The seventh juror is number 30, who was
3 019. The eighth juror is 31, who was 038. The ninth juror
4 is 32, who was 051. The tenth juror is 33, who was 036.
5 The eleventh juror is 36, who was 030. And the twelfth
6 juror is 37, who was 053. No. No. I'm sorry. I'm wrong
7 on that one. The twelfth juror is 38, who was 059. And
8 the alternates are 40 and 41.

9 Everyone agree with the Court's reiteration of
10 the challenges?

11 MS. CROSS: Yes, Your Honor.

12 MR. FELSON: Yes.

13 THE COURT: Mr. Felson, yes?

14 MR. FELSON: Yes.

15 THE COURT: Walter Pugh?

16 DEFENDANT W. PUGH: Yes.

17 THE COURT: Okay. Thank you. We have got a
18 jury. We will go ahead and excuse -- well, I guess we need
19 to bring everybody back in, and all I'll do is we will
20 swear them in, and then we will let everybody go to lunch.

21 How long do you need, Steve?

22 THE COURTROOM DEPUTY: Ten minutes.

23 THE COURT: Steve needs ten minutes to get
24 everybody down here. So we will -- let's stand in recess
25 for about ten minutes.

1 (Recess at 1:25 p.m.)

2 AFTER RECESS

3 (Jury panel seated by the courtroom deputy.)

4 THE COURT: We now have 14 of you seated in the
5 jury box. You all understand that you have been asked
6 questions in order to determine your ability to make
7 determinations in this case free from any bias or sympathy
8 for or against either side. While you have been asked many
9 and varied questions, it is quite possible that you were
10 not asked questions that would have a bearing on your
11 qualifications. So I will ask these questions now.

12 Can you promise to decide this case strictly on
13 the facts as developed from the witness stand and exhibits
14 admitted into evidence and the law as I give it to you?

15 Can you promise to keep an open mind and not
16 discuss this case with anyone, including your fellow
17 jurors, until you are ordered to retire to the jury room to
18 deliberate?

19 Can any of you think of any reason why you could
20 not be fair and impartial in carrying out your duties in
21 this trial?

22 Finally, is there any reason at all why any of
23 you feel that you could not or should not serve on this
24 jury?

25 I take it from your silence that you feel that